

**PEMBANGUNAN ORKID DESA SDN BHD v.
LIPUTAN SIMFONI SDN BHD & ORS**

HIGH COURT MALAYA, KUALA LUMPUR
AZIZUL AZMI ADNAN JC
[CIVIL SUIT NO: 22NCVC-313-04-2013]
28 SEPTEMBER 2015

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LAND LAW: *Sale of land – Indefeasibility of title and interests – Dispute – Impostor company claiming to be registered proprietor entered into sale and purchase agreement ('SPA') with second defendant – Whether subsequent transfer of land effected through forged documents – Whether second defendant's title defeasible – Second defendant sold land to first defendant – Whether second SPA had effect of evading real property gains tax – Whether second SPA void ab initio – Whether first defendant a purchaser in good faith and for valuable consideration – Whether plaintiff barred by limitation in claim against third defendant – Whether third defendant owed any duty of care to plaintiff – Whether Register of Titles should be amended to reflect plaintiff as registered proprietor of land – National Land Code, s. 340(2)(b) – Contracts Act 1950, s. 24(b)*

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LAND LAW: *Caveat – Private caveat – Registrar's caveat – Whether an exercise of rights to protect legitimate claim over land – Impostor company claiming to be registered proprietor of land – Whether subsequent transfer effected through forged documents – Whether title thereof defeasible – Whether first defendant a purchaser in good faith and for valuable consideration – Whether Register of Titles should be amended to reflect plaintiff as registered proprietor of land*

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The plaintiff, Pembangunan Orkid Desa Sdn Bhd, was the registered proprietor of a piece of land ('the subject land'). Sometime in 2004, an impostor company claiming to be the plaintiff made an application to the Pendaftar Tanah dan Galian ('PTG'), the third defendant, for a replacement title for the land in question. The third defendant processed the application and issued a replacement issue document of title in respect of the subject land to the impostor company. On 23 January 2006, the impostor company entered into a sale and purchase agreement ('the first SPA') to sell the land to Chai Sit Trading Sdn Bhd, the second defendant, for the sum of RM680,000 which was completed on 31 May 2006, when the second defendant was registered as the proprietor of the subject land. The second defendant then sold the land to Liputan Simfoni Sdn Bhd, the first defendant. The sale and purchase agreement between the second defendant as seller and the first defendant as purchaser ('the second SPA') was dated 25 August 2006 and the purchase price was RM900,000. The first defendant also paid the amount of RM870,000 to the second defendant for payment for the cost of earthworks. On 25 September 2006, the impostor company lodged a private caveat on the land, alleging that it had not been paid the balance purchase

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- A price. The first defendant, on 28 December 2006, presented the memorandum of transfer for the subject land, together with the notice in Form 19G for the withdrawal of the impostor company's private caveat. On 21 February 2007, the impostor company wrote to the registrar of titles, requesting for a registrar's caveat to be entered onto the subject land, on
- B grounds that the withdrawal of the private caveat was done without its knowledge. A registrar's caveat was duly entered onto the land on 27 March 2007, as a result of which the first defendant could not be registered as proprietor of the subject land. At some point, the plaintiff found out that
- C someone had started to clear the land. The plaintiff conducted a land search and discovered that the land was registered in the name of the second defendant. On 24 April 2008, the plaintiff made a police report stating that it had never sold the land and that the original issue document of title was still in its possession. The plaintiff also notified the third defendant and in response, the third defendant informed the plaintiff that they would be conducting an investigation into the transfers. On 7 January 2009, the second
- D defendant applied to court to remove the registrar's caveat, which was allowed by the High Court. The first defendant was then registered as the proprietor of the subject land on 11 February 2010. On 7 September 2012, the plaintiff lodged a private caveat over the land. The plaintiff sought, *inter alia*, to have itself declared as the rightful registered proprietor of the subject
- E land. The issues that arose were (i) whether the title of the second defendant was defeasible under s. 340(2)(b) of the National Land Code ('NLC'); (ii) whether the first defendant was a purchaser in good faith and for valuable consideration within the meaning of s. 340(3) of the NLC such that it acquired indefeasible title; (iii) whether the earthworks payment was in
- F reality made in part payment for the land, and whether the second SPA had the effect of depriving the state of revenue and was therefore *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950, rendering the title of the first defendant defeasible under s. 340(2)(b) of the NLC; (iv) whether the plaintiff was barred by limitation as against the third defendant in relation to the acts
- G of the third defendant in effecting registration of the first and second defendants as proprietors; and (v) whether the defendants owed a duty to the plaintiff to notify it of the action by the second defendant to remove the registrar's caveat and whether the defendants' failure to do so amounted to a breach of this duty for which they were liable in damages.
- H **Held (register of titles to be amended to reflect plaintiff as registered proprietor of subject land; third defendant liable to plaintiff for damages):**
- (1) The impostor company had obtained title to the subject land by way of forged documents. The subsequent transfer to the second defendant was also effected through forged documents, as the company that purported
- I to effect the transfer of title to the second defendant was not the real Pembangunan Orkid Desa Sdn Bhd. It followed therefore that the second defendant's title was defeasible under s. 340(2)(b) of the NLC.

- It was not necessary for the plaintiff to show that the second defendant was complicit in the forgery in order for the second defendant's title to be rendered defeasible. (paras 27 & 28) A
- (2) The payment for the earthworks was made up front, even before the signing of the second SPA. At this point, there would not have been any certainty that the sale and purchase of the land would even proceed to completion, but yet the first defendant was willing to pay for a very substantial sum for earthworks (on land that it did not yet own). It would appear to be contrary to good business sense to do so. Further, the payment of RM870,000 for earthworks was not documented in any agreement between the first and second defendants. The director and shareholder of the second defendant even admitted that the earthworks had not been carried out to date. On a balance of probabilities, the earthworks payment was not a genuine payment for services to be provided by the second defendant, but rather a means of suppressing the documented purchase consideration of the subject land. (para 41) B C D
- (3) The second SPA had the effect of evading the payment of real property gains tax on the undeclared profit and the payment of stamp duty on the additional consideration. As such, the second SPA was *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950. As the second SPA was *void ab initio*, the transfer of the title for the subject land from the second defendant to the first defendant was obtained by means of a void instrument, which in turn rendered the title of the first defendant defeasible pursuant to s. 340(2)(b) of the NLC. Therefore, the register of titles should be amended to reflect the plaintiff as the registered proprietor of the subject land. The action by the plaintiff to lodge a private caveat over the land was in exercise of its rights to protect its legitimate claim over the land. (para 44) E F
- (4) The first defendant had entered into the second SPA on 25 August 2006. There was no evidence before this court to suggest that, at this time, the first defendant knew of the existence of the plaintiff and of his claim over the subject land. The evidence suggested that the first defendant only came to know about the plaintiff later, but certainly no later than 7 November 2008, when the investigation meeting was held at the premises of the third defendant. A person only becomes a proprietor upon registration (*Muhammad Buyong v. PHT Gombak & Anor*). Accordingly, even though the first defendant was registered as a proprietor as of 28 December 2006, the actual date of registration was 11 February 2010. In the judgment of this court, if a purchaser enters into a transaction in good faith, but before registration commits an act or acquires a state of mind that vitiates good faith, he may no longer claim to be a purchaser in good faith at the point of registration. (para 47) G H I

- A (5) In order to discharge the burden of showing that it was a purchaser in
good faith and for valuable consideration, the purchaser must not only
show the absence of fraud, deceit or dishonesty but also that it had taken
the ordinary precautions that a reasonably prudent purchaser would
have taken in the circumstances. A reasonably prudent purchaser in this
B context means a person with the knowledge, attributes and
circumstances of the particular purchaser in question. The first
defendant had known of the existence of the plaintiff and the fact that
the plaintiff was claiming the subject land, because their respective
representatives had attended the third defendant's investigation meeting
C on 7 November 2008. The first defendant therefore acquired knowledge
of the existence of the plaintiff's claim (even if not the precise nature of
such claim) before the first defendant became the registered proprietor.
The first defendant had, at that point, a contractual remedy against the
second defendant for rescission of the second SPA which would have
D been the most prudent course of action that a reasonable purchaser
would have taken. Instead, the first defendant had pursued completion
of the second SPA. A person acting in good faith would have taken steps
to ascertain who the rightful proprietor was. The first defendant had not
proven, on a balance of probabilities, that it was a purchaser in good
faith and for valuable consideration. (paras 51, 54 & 58)
- E (6) In as far as the acts of the third defendant in effecting registration of the
first and second defendants were concerned, the plaintiff was barred by
limitation as against the third defendant, for the following reasons (a) in
relation to the registration of the second defendant, the cause of action
F arose when the plaintiff discovered that the land had been transferred to
the second defendant. Even assuming that the plaintiff found out about
the transfer only in February 2008, the plaintiff's cause of action would
have expired in February 2011. This suit was only commenced on
25 February 2013 and (b) in relation to the registration of the first
G defendant, the cause of action would have arisen when the first
defendant was registered as proprietor, which was on 11 February 2010.
This meant that the plaintiff would also be barred by limitation in its
claim against the third defendant in connection with the registration of
the first defendant as proprietor. (para 66)
- H (7) The plaintiff had claimed against the defendants for their failure to
inform the plaintiff of the notice of motion commenced by the second
defendant to remove the registrar's caveat. The claims against the first
and second defendants may be dismissed for the simple reason that
neither of them, as purchasers of the land, owed any duty to the plaintiff
to inform the plaintiff that the second defendant was seeking to remove
I the registrar's caveat. However, a duty of care was owed by the third
defendant to the plaintiff to notify it of the proceedings to remove the

registrar's caveat, notwithstanding the fact that the caveat had been entered pursuant to a complaint not by the plaintiff but by the impostor company. In this case, the plaintiff had made a separate complaint that its title had been usurped. In such circumstances, a duty arose on the third defendant to inform the complainant that an application had been made to remove the restraint in dealings, as any such action would have materially and adversely affected the plaintiff's interests. The failure by the third defendant to notify the plaintiff of the application by the second defendant to remove the registrar's caveat amounted to a breach of this duty. (paras 67-72)

[Order accordingly.]

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC (*refd*)

Au Meng Nam & Anor v. Ung Yak Chew & Ors [2007] 4 CLJ 526 CA (*refd*)

Caparo Industries Plc v. Dickman [1990] 2 AC 605 (*refd*)

Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd & Anor [1989] 1 LNS 191 PC (*refd*)

Mohammad Buyong v. Pemungut Hasil Tanah Gombak & Ors [1981] 1 LNS 114 (*refd*)

Ong Ban Chai v. Seah Siang Mong [1998] 3 CLJ 637 CA (*refd*)

Ong Chat Pang & Anor v. Vallippa Chettiar [1971] 1 LNS 96 FC (*refd*)

Palaniappa Chettiar v. Arunasalam Chettiar [1962] 1 LNS 115 PC (*refd*)

Pekan Nenas Industries v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC (*refd*)

State Tailor Sdn Bhd v. Nallapan [2005] 2 CLJ 167 CA (*refd*)

Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269 FC (*refd*)

Thong Foo Ching & Ors v. Shigenori Ono [1998] 4 CLJ 674 CA (*refd*)

Legislation referred to:

Contracts Act 1950, s. 24(b), (e)

National Land Code, s. 340(2)(a), (b), (3)

Public Authorities Protection Act 1948, s. 2(a)

Other source(s) referred to:

Teo & Khaw, *Land Law in Malaysia*, 3rd edn, para 4.162

For the plaintiff - Balbir Singh (Ho Hon Keong & Premkumar Danapal with him); Palani Aishah & Co

For the 1st defendant - NG Vinod (Sofian Shamsudin with him); Tam Cheng Yau & Co

For the 2nd defendant - Henry Ngok (NS Tan with him); M/s Au Yong, Ng & Ngok

For the 3rd defendant - Narkunavathy Sundareson (Wan Suhaila Mohd with her); FCs

Reported by Suhainah Wahiduddin

JUDGMENT

Azizul Azmi Adnan JC:

Introduction

[1] This case involved a land dispute. The plaintiff, Pembangunan Orkid Desa Sdn Bhd, sought (among others) to have itself declared as the rightful registered proprietor of a piece of land located in Kuala Lumpur.

A Material Facts

[2] The material facts of this case are as follows.

[3] The plaintiff was the registered proprietor of a piece of land in Kuala Lumpur held under Grant No. 53097 Lot 2788 Mukim Petaling, Wilayah Persekutuan.

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[4] Sometime in 2004, an impostor company claiming to be Pembangunan Orkid Desa Sdn Bhd made an application to the Pendaftar Tanah dan Galian (PTG), the third defendant, for a replacement title for the land in question, alleging that the issue document of title was missing or had been misplaced. This impostor company had the same name as the plaintiff, but bore a different company number, 9048-D (instead of 31550-U). The company bearing the registration number 9048-D was in fact another company called Pembangunan Bersatu Sdn Bhd, which was confirmed at trial by an officer of the Companies Commission of Malaysia. In its application to the third defendant, the impostor company appended a falsified copy of the results of a company search purportedly carried out at the Companies Commission of Malaysia.

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[5] The third defendant processed the application and issued a replacement issue document of title in respect of the subject land to the impostor company on 19 May 2005.

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[6] On 23 January 2006, the impostor company entered into a sale and purchase agreement (the first SPA) to sell the land to Chai Sit Trading Sdn Bhd, the second defendant, for the sum of RM680,000. This sale was completed on or about 31 May 2006, when the second defendant was registered as the proprietor of the subject land.

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[7] Within just three months of completing the purchase, the second defendant then sold the land to Liputan Simfoni Sdn Bhd, the first defendant. Lee Ah Ing (DW2), a shareholder and director of the second defendant explained that it was only after having paid the purchase price in full that he discovered that the land was adjacent to some oxidation ponds and did not have good feng shui for residential housing. He therefore made the decision to sell the land.

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[8] It may be observed that it is unusual for a purchaser to have purchased land for a large sum of money without having first done an inspection of its location and surroundings that would have revealed the existence of the oxidation ponds and the steep hill on the south of land, factors which DW2 considered to be bad feng shui. Indeed, there are other details in the testimony of DW2 that do not fare well to close scrutiny. However, as we shall see later, the title to the land would have been defeasible in the hands of the second defendant by reason of s. 340(2)(b) of the National Land Code

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(NLC), regardless of the culpability of the second defendant. Accordingly, it will not be necessary for the purposes of this judgment to evaluate the veracity or otherwise of DW2's testimony.

[9] The sale and purchase agreement between the second defendant as seller and the first defendant as purchaser (the Second SPA) was dated 25 August 2006. Under the Second SPA, the purchase price was RM900,000. The first defendant also paid the amount of RM870,000 to the second defendant even before the agreement was executed. This was payment for the cost of earthworks. However, based on the evidence received at trial, the earthworks have not been carried out by the second defendant to date. DW2 testified that only "very preliminary" earthworks had been carried out, which did not involve any cutting of soil.

[10] On 25 September 2006, the impostor company lodged a private caveat on the land, alleging that it had not been paid the balance purchase price.

[11] On 28 December 2006, the first defendant presented the memorandum of transfer for the subject land, together with the notice in Form 19G for the withdrawal of the impostor company's private caveat, which the first defendant's solicitors had obtained from the second defendant's solicitor (Pannirselvam Manner Reddy, DW3), who in turn received it, according to his testimony in court, from the solicitor acting for the impostor company.

[12] On 21 February 2007, the impostor company wrote to the Registrar of Titles requesting for a registrar's caveat to be entered onto the subject land, on grounds that the withdrawal of the private caveat was done without its knowledge. A registrar's caveat was duly entered onto the land on 27 March 2007, as a result of which the first defendant could not be registered as proprietor of the subject land.

[13] At some point, Tan Hock Lai (PW2), a director of the plaintiff, found out that someone had started to clear the land. The plaintiff conducted a land search and discovered that the land was registered in the name of the second defendant. On 24 April 2008, the plaintiff made a police report stating that it had never sold the land and that the original issue document of title was still in its possession. The plaintiff also notified the PTG (the third defendant).

[14] In response, the third defendant informed the plaintiff that it would be conducting an investigation into the transfers. This investigation was conducted by way of a meeting on 7 November 2008, at the premises of the PTG at which PW2 representing the plaintiff, DW2 representing the second defendant and Gan You Lam (DW1, the representative of the first defendant) were present.

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A [15] I pause here to observe that the plaintiff at this point had discovered its land being cleared by strangers, and that the land had been transferred to another company. The plaintiff made a police report, and also notified the PTG. It discovered that a registrar's caveat had been entered onto the land. Having notified the PTG, it would have been entirely reasonable for the
B plaintiff to expect that that the truth would prevail and that it would be restored as the rightful registered proprietor of the subject land.

[16] Unfortunately, that was not what happened.

[17] According to PW2, the third defendant did not follow up with the
C plaintiff to update it on the outcome of the meeting. In addition and rather alarmingly, there were no minutes or other records in the possession of the third defendant showing the outcome of the investigation¹.

[18] On 7 January 2009 the second defendant applied to court to remove
D the registrar's caveat, naming the third defendant as a respondent in the originating motion. The first defendant intervened in the action. The third defendant applied to court to include the plaintiff as a party to the action, but this application was opposed by the first defendant and the second defendant.

[19] The relevant affidavit of the representative of the third defendant stated:

E 9. Saya sesungguhnya menyatakan bahawa saya juga dinasihatkan oleh Peguam Kanan Persekutuan yang mengendalikan kes ini bahawa pihak Pembangunan Orkid Desa Sdn Bhd seharusnya dijadikan suatu pihak dalam prosiding ini supaya semua pihak yang berkepentingan boleh mengemukakan fakta yang material dan relevan berhubung dengan
F kemasukan Kaveat Pendaftar dan diberi peluang untuk didengar dalam prosiding ini.

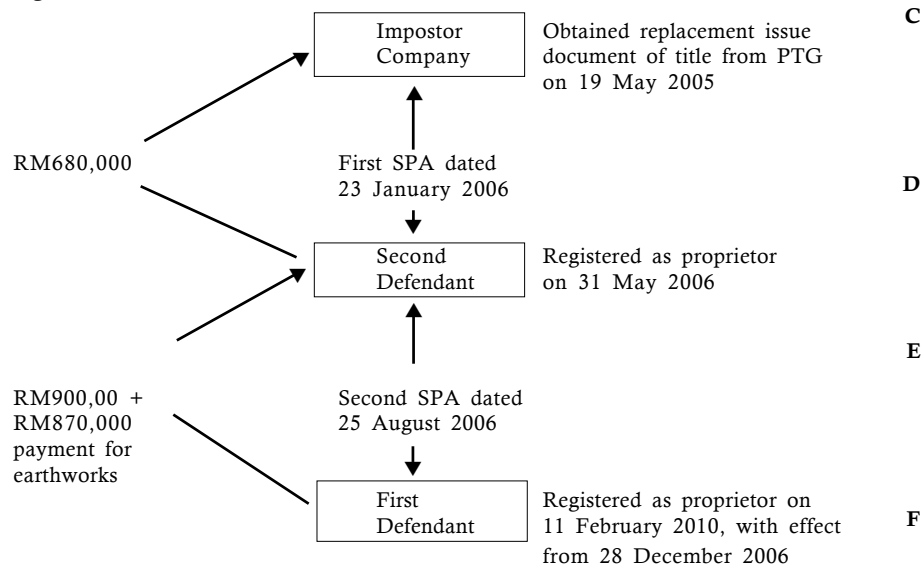
[20] It has to be remembered that at this point, it would not have been apparent to the third defendant that there were two companies claiming to be Pembangunan Orkid Desa Sdn Bhd.

G [21] On 19 November 2009, the High Court granted the second defendant's application to remove the registrar's caveat, which was duly removed by the third defendant on 22 January 2010. According to the testimony of Nor Azura Abdul Rahman (DW4), the witness for the third defendant, the first
H defendant was then registered as the proprietor of the subject land on 11 February 2010², but with effect from the date on which the memorandum of transfer was originally presented, which was 28 December 2006.

[22] Counsel for the first defendant alleged that there were discrepancies in the copies of the police report dated 24 April 2008. I am of the view that nothing material turns on those discrepancies. In any event, I am satisfied
I based on the evidence that a report was in fact made.

[23] On 7 September 2012, the plaintiff lodged a private caveat over the land. Based on the evidence received at trial, the director of the plaintiff who had attested to the affixing of the common seal of the plaintiff on the Form 19B for the caveat lodgement was bankrupt at the material time, which led to the caveat being removed by the third defendant. The first defendant in its counterclaim alleged that the plaintiff was liable to it for wrongfully entering the private caveat, which had caused the first defendant to suffer losses.

[24] The transactions under consideration are summarised in the following diagram:



Issues

[25] Having heard the evidence at trial, I reformulated the key and determinative issues in this case into the following:

- (a) whether the title of the second defendant was defeasible under s. 340(2)(b) of the NLC, on account of the fact that the registration of the second defendant was effected through forged documents;
- (b) whether the first defendant was a purchaser in good faith and for valuable consideration within the meaning of s. 340(3) of the NLC such that it acquired indefeasible title, and in this connection:
 - (i) whether the relevant time at which good faith is to be ascertained is the time at which the transaction was entered into by the purchaser, or the time at which it was registered as proprietor; and

- A (ii) whether good faith meant simply the absence of fraud, deceit or dishonesty, or whether a purchaser was under a positive duty to take the ordinary precautions that a reasonably prudent purchaser would have taken in the circumstances before it may be considered to be *bona fide*;
- B (c) whether the earthworks payment was in reality made in part payment for the land, and whether the second SPA had the effect of depriving the state of revenue and was therefore *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950, rendering the title of the first defendant defeasible under s. 340(2)(b) of the NLC;
- C (d) whether the plaintiff was barred by limitation as against the third defendant in relation to the acts of the third defendant in effecting registration of the first and second defendants as proprietors; and
- D (e) whether the defendants owed a duty to the plaintiff to notify it of the action by the second defendant to remove the registrar's caveat and whether the defendants' failure to do so amounted to a breach of this duty for which they are liable in damages.

[26] These issues are considered in the following paragraphs.

Analysis

- E [27] It is abundantly clear that the impostor company obtained title to the subject land by way of forged documents. The subsequent transfer to the second defendant was also effected through forged documents, as the company that purported to effect the transfer of title to the second defendant was not the real Pembangunan Orkid Desa Sdn Bhd. This was not disputed in evidence by the defendants.

- F [28] It follows therefore that the second defendant's title was defeasible under s. 340(2)(b) of the NLC. It is not necessary for the plaintiff to show that the second defendant was complicit in the forgery in order for the second defendant's title to be rendered defeasible.

- G [29] The title to the land was transferred from the second defendant to the first defendant on 11 February 2010, with effect from 28 December 2006. The title of the first defendant would be defeasible under s. 340(3) unless the first defendant can avail itself of the proviso to s. 340(3), ie that it was a purchaser in good faith and for valuable consideration. The first defendant bears the burden of proving that it is a purchaser in good faith and for valuable consideration: see *Ong Chat Pang v. Vallippa Chettiar*³.

- H [30] Before considering the issue of *bona fides*, I address the plaintiff's argument that the second SPA was void.

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Illegality

[31] It was advanced for the plaintiff that the real consideration for the purchase of the land by the first defendant was the sum of RM900,000 (being the documented price under the Second SPA) and RM870,000 (the amount paid for earthworks that have yet to be carried by the second defendant) and that the first and second defendants had colluded with each other to evade the payment of real property gains tax on the undeclared profit and the payment of stamp duty on the additional consideration. Counsel for the plaintiff cited the case of *Thong Foo Ching & Ors v. Shigenori Ono*⁴ in support for the proposition that an agreement that deprived the government of its revenue was illegal and unenforceable on grounds that it was contrary to public policy.

[32] In *Thong Foo Ching & Ors v. Shigenori Ono*, the parties entered into two sale and purchase agreements that were structured in a manner as to circumvent the applicable guidelines issued by the Foreign Investment Committee (FIC), which required that transactions in excess of RM5 million be subject to the requirement for FIC approval. The sale and purchase was divided into two, one for the sale of lands, for which the purchase price was RM4.9 million, just under the threshold for FIC approval. The other was an agreement for the sale of a company, for which the consideration was RM1.6 million. The agreement for the purchase of lands did not proceed to completion, and the purchaser sought to rescind the sale and purchase of shares, on the basis that there was a tacit oral agreement that the two agreements were inter-conditional. It was not disputed by the parties that the structuring of the agreements in the manner that they did had deprived the government of revenue in the form of real property gains tax and stamp duty.

[33] Siti Norma JCA held that, although the guidelines issued by the FIC were not law, the agreements were nonetheless *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950 as the agreements were of such a nature as would defeat the Real Property Gains Tax Act 1976 and the Stamp Act 1949, while Ahmad Fairuz JCA also found the agreements to be void, but on the grounds that they were opposed to public policy pursuant to s. 24(e) of the Contracts Act 1950.

[34] As the agreements were *void ab initio*, the court could not assist the purchaser to recover the money that he had already paid under the agreement that he sought to rescind.

[35] In response, counsel for the defendant referred me to the Federal Court decision in *Pekan Nenas Industries v. Chang Ching Chuen & Ors*⁵, which held that while a purchaser's failure to retain a portion of the purchase consideration in a transaction for the purchase of lands may have amounted to a breach of a taxing statute and exposed the purchaser to liability for such

A breach, the failure to so retain did not affect the ability of the purchaser to invoke the rule in *Turquand's* case or the issue of whether the purchaser was *bona fide*.

B [36] Counsel for the plaintiff in the case before me sought to distinguish *Pekan Nenas* on the basis that the case merely involved the obligation to retain part of the purchase consideration for the purposes of real property gains tax, whereas in the present case the purchase consideration was structured in a manner as to deprive the government of its revenue and was therefore an egregious breach that warranted a finding that the Second SPA was *void ab initio*.

C [37] The principle that an agreement to deprive the revenue will be unenforceable has been established by a long line of authorities: see for example the decision of the Judicial Committee of the Privy Council in *Palaniappa Chettiar v. Arunasalam Chettiar*⁶. Under the Contracts Act 1950, such an agreement is not merely unenforceable, but is void. Indeed, D Malaysian law does not recognise the distinction at common law between void and unenforceable contracts.

E [38] This is a significant point, because if I were to hold that the second SPA was *void ab initio*, it would follow that the transfer of title from the second defendant to the first defendant would have been obtained by a void instrument, and therefore the title of the first defendant would be defeasible pursuant to s. 340(2)(b) of the NLC. At common law, the agreement may be only unenforceable, which simply means that the courts would not assist the parties in enforcing their rights thereunder, but does not necessarily enable F a third party such as the plaintiff to intervene to strike the agreement down.

F [39] Illegality was not a point that was pleaded by the plaintiff, but this court is not only entitled but also obliged to take notice of the illegality of any agreement: see the Privy Council decision in *Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd & Anor*⁷.

G [40] The issue thus turns upon whether the payment of RM870,000 was a genuine payment for earthworks to be undertaken by the second defendant, or whether it was to disguise the true purchase price of the subject land, rendering the Second SPA *void ab initio*.

H [41] I am of the view that, on a balance of probabilities, the earthworks payment was not a genuine payment for services to be provided by the second defendant, but rather a means of suppressing the documented purchase consideration of the subject land. I have come to this conclusion based on the following:

I (a) the payment for the earthworks was made up-front, even before the signing of the second SPA. At this point, there would not have been any certainty that the sale and purchase of the land would even proceed to completion, but yet the first defendant was willing to pay for a very

- substantial sum for earthworks (on land that it did not yet own). It would appear to be contrary to good business sense to do so, unless the payment was in reality in the nature of a deposit or part payment of the purchase price; A
- (b) the fact that payment for the RM870,000 was made before the execution of the Second SPA only came up in evidence following cross-examination by the counsel for the plaintiff, when it was put to DW1 that there was no evidence of any payment by the first defendant. It was only when it became apparent to counsel for the first defendant that the court would place the burden on the first defendant to show that it was a purchaser in good faith for valuable consideration that he sought leave of court to introduce copies of the banker's cheques⁸; B C
- (c) it does not appear that the payment of RM870,000 for earthworks was documented in any agreement between the first and second defendants, except in the cover letter of the solicitors for the first defendant to the solicitors for the second defendant enclosing banker's cheques as payment. Even here, the nature of the payment of RM870,000 was not specified; the letter simply stated that the cheque was enclosed. Again, it would appear to be contrary to good business sense to pay such a substantial sum that was almost equal to the cost of the land itself without proper documentation; D E
- (d) DW2, the director and shareholder of the second defendant, admitted that the earthworks had not been carried out to date. DW2 testified that, notwithstanding this, he was ready to undertake the earthworks upon instructions of the first defendant. The first defendant was however strangely sanguine about the second defendant keeping the substantial sum of RM870,000 for over eight years without having undertaken the earthworks; and F
- (e) Lembaga Hasil Dalam Negeri had given an adjudication notice to the second defendant in connection with its purchase of the subject land that had placed the value of the land at RM1,275,000, more than 40% higher than the price of the subsequent purchase by the first defendant. This suggests that the market value of the land was much higher than the price specified in the Second SPA. G
- [42] None of these factors is decisive on its own. Nonetheless, when the factual circumstances are viewed as a whole, I am satisfied that the payment of RM870,000 went towards the purchase of the land, and that the real purchase price was RM1,770,000 and not RM900,000. H
- [43] Does the plaintiff need to show that the first and second defendants had intended to deprive the government of its revenue? Siti Norma JCA in *Thong Foo Ching v. Shigenori Ono* provides the answer: I

- A [T]he respondent contended that he and the appellants never intended to infringe the Real Property Gains Tax Act or the Stamp Act as their primary concern was to circumvent the guidelines only and to proceed with the sale and purchase of the properties and Windollars quickly without the bother of getting FIC approvals. In any event, the real property gains tax was payable by the vendor, the third appellant, and for the appellants to complain that the respondent was all out to cheat the revenue seems a rather perplexing contention.
- B

My views on this contention are that the respondent may never have intended to avoid any statute but the consequence of his action has the same effect as the very intention that he never had.

- C [44] I accordingly find that:

- (a) the real purchase price of the land was RM1,770,000 and the second SPA had the effect of evading the payment of real property gains tax on the undeclared profit and the payment of stamp duty on the additional consideration;
- D
- (b) as such, the Second SPA is *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950; and
- (c) as the second SPA was *void ab initio*, the transfer of the title for the subject land from the second defendant to the first defendant was obtained by means of a void instrument, which in turn renders the title of the first defendant defeasible pursuant to s. 340(2)(b) of the NLC.
- E

- [45] This finding would be sufficient to address the claim of the plaintiff for the purposes of restoring the plaintiff as the rightful registered proprietor of the land. I nonetheless consider in the following paragraphs the issue of whether the first defendant can claim to be a purchaser in good faith for valuable consideration.
- F

Purchaser In Good Faith And For Valuable Consideration

- [46] In my judgment, the first defendant has failed to establish, on a balance of probabilities, that it was a purchaser in good faith and for valuable consideration.
- G

[47] The legal analyses involve the following two question of law:

- (a) When is the *bona fides* of a purchaser ascertained for the purposes of s. 340(3) of the NLC?
- H

- This question is significant in the present case, as the first defendant entered into the second SPA on 25 August 2006. There is no evidence before this court to suggest that, at this time, the first defendant knew of the existence of the plaintiff and of his claim over the subject land. The evidence suggests that the first defendant only came to know about the plaintiff later, but certainly no later than 7 November 2008, when the investigation meeting was held at the premises of the PTG. It will
- I

be recalled that the first defendant was registered as the proprietor of the land on 11 February 2010, but with effect from 28 December 2006 (being the date of presentation of the memorandum of transfer).

(b) What is meant by “good faith”?

Does good faith simply mean the absence of fraud, deceit or dishonesty, or must a purchaser show some level of prudence and care before it may be considered to be *bona fide*? Does notice of an adverse claim vitiate good faith?

Timing For Determination Of Bona Fides

[48] A person only becomes a proprietor upon registration: see *Mohammad Buyong v. Pemungut Hasil Tanah Gombak & Ors*⁹. Accordingly, even though the first defendant was registered as a proprietor as of 28 December 2006, the actual date of registration was 11 February 2010. Prior to this latter date, the first defendant was not the registered proprietor of the subject land.

[49] In *Ong Ban Chai v. Seah Siang Mong*¹⁰, the Court of Appeal considered the meaning of *bona fide* purchaser in the context of s. 340(3) of the NLC, and the time at which the *bona fides* was to be ascertained, and cited with approval the decision of the Federal Court in *Pekan Nenas*¹¹:

In coming to our decision, we had the advantage and benefit of the judgment of the Federal Court consisting of five judges in the case of *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 MLJ 465. At the time when the learned trial judge gave his decision and when this appeal was heard, the Federal Court had not delivered its decision yet. Before we made our decision, judgment of the Federal Court in the *Pekan Nenas Industries* case was delivered. Learned counsel for the appellants, Mr Wong Kim Fatt, drew our attention and the attention of the respondent’s counsel, Mr Arthur Lee, to this judgment. Mr Wong Kim Fatt extended to us and Mr Arthur Lee copies of the judgment which was reported at [1998] 1 MLJ 465 without any submission to which Mr Arthur Lee responded.

This case has been hailed to be a landmark judgment of the Federal Court where it rejected the proposition that one is not a *bona fide* purchaser unless one has paid the full purchase price under the contract of sale as propounded by the Court of Appeal in the *Aik Ming* case, on which the learned trial judge had based his decision. The Federal Court decided that to be a *bona fide* purchaser one should have contracted in good faith for value, and that knowledge of an adverse claim is not fraud. The material time is the time of the transaction. We observe that the Federal Court found in favour of the intervener/purchaser ie the appellant company, which paid the balance of the purchase price when the second caveat was still subsisting. Delivering the judgment of the Federal Court, Edgar Joseph Jr FCJ said at p 508:

- A The material time at which there must be knowledge or the means of knowledge is the time of entry into the transaction. (See *Kanssen v. Rialto (West End) Ltd* [1944] Ch 346; *Morris v. Kanssen* [1946] AC 459.)
- B His Lordship had the opportunity to reaffirm in greater detail in the Federal Court his earlier views in the *Goh Hooi Yin* case in respect of *Waimiha Sawmilling's* case.
- C [50] The Court of Appeal ruled that the relevant time was the time at which the transaction was entered (rather than the time at which the purchaser was registered as proprietor). This ruling however did not form part of the *ratio decidendi* in *Ong Ban Chai*, as the timing of the determination of *bona fides* was not an issue in that case.
- D [51] I am therefore entitled to depart from the *dicta* of the Court of Appeal on this basis. In my judgment, the relevant time should be the time a purchaser was registered as proprietor, and not the time of entry into the transaction. In other words, if a purchaser enters into a transaction in good faith, but before registration commits an act or acquires a state of mind that vitiates good faith, he may no longer claim to be a purchaser in good faith at the point of registration. This conclusion is based on the following considerations:
- E (a) The proviso to s. 340(3), in so far as it is material for the present case, reads:
- Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration ...
- F It follows from *Muhammad bin Buyong v PHT Gombak & Anor* that title is only acquired upon registration. Accordingly, based on the wording of the proviso, all and any circumstances of the purchaser prior to registration may be validly taken into account in determining the issue of whether or not such purchaser was acting in good faith.
- G (b) The second consideration, and this point is made with the utmost of deference and respect to the Court of Appeal in *Ong Ban Chai*, is that full reliance ought not have been placed on the judgment of the Federal Court in *Pekan Nenas* for the purposes of construing the meaning of *bona fides* under s. 340(3), for the reason that *Pekan Nenas* was not a case dealing with s. 340(3). *Pekan Nenas* dealt with the claim by a purchaser/
- H intervener that it was entitled to rely on the rule in *Turquand's* case and that it was a *bona fide* purchaser for value and without notice for the purposes of s. 26(b) of the Specific Relief Act 1950, which it will be recalled provides for the limited ability to bind non-parties to a contract.
- I The intervener/purchaser in *Pekan Nenas* had not been registered as proprietor of the land in question, and as such the issue of defeasibility of title did not arise. Although there was a discussion on s. 340(2)(a) of

the NLC in *Pekan Nenas*, that discussion was obiter. Accordingly, although the decision in *Pekan Nenas* is good authority for the proposition that good faith is to be determined at the time of entry into the transaction for the purposes of determining *bona fides* under s. 26(b) of the Specific Relief Act 1950, the decision does not apply for the purposes of determining good faith under s. 340(3) of the NLC, as the effects of the specific legislative provision was not considered in either *Pekan Nenas* or *Ong Ban Chai*'s case.

The Meaning Of Good Faith

[52] It may be observed that there have been two threads of authorities regarding the meaning of good faith:

- (a) cases such as *Ong Ban Chai* and *State Tailor Sdn Bhd v. Nallappan*¹² took the view that good faith simply meant the absence of fraud, deceit or dishonesty. In *Ong Ban Chai*¹³, the Court of Appeal ruled that mere knowledge of an adverse claim did not vitiate good faith;
- (b) in contrast, more recent cases such as *Au Meng Nam & Anor v. Ung Yak Chew & Ors*¹⁴ imposed a positive duty on purchasers to investigate properly all matters relating to the sale of land and not to blindly accept what was said by the vendors. Purchasers must take the ordinary precautions which ought to be taken in an acquisition of land before they can be considered to have proven themselves to be *bona fide* purchasers. In other words, it is not sufficient for a purchaser to merely show that it has not been tainted by fraud, deceit or dishonesty.

[53] The more expansive duty on purchasers was adopted by the courts following the decision of the Federal Court in *Adorna Properties v. Boonsom Boonyanit*¹⁵, likely in response to, and to ameliorate the effects of, the adoption in that case of the principle of immediate indefeasibility. Of course, with the reversion to deferred indefeasibility with the decision in *Tan Ying Hong v. Tan Sian San & Ors*¹⁶, the question may validly be asked whether the expansive view remains the correct test to apply in determining *bona fides*.

[54] In my judgment, the appropriate test to be applied remains that as set out in *Au Meng Nam v. Ung Yak Chew & Ors*. Accordingly, in order to discharge the burden of showing that it is a purchaser in good faith and for valuable consideration, the purchaser must not only show the absence of fraud, deceit or dishonesty but also that it had taken the ordinary precautions that a reasonably prudent purchaser would have taken in the circumstances. A reasonably prudent purchaser in this context means a person with the knowledge, attributes and circumstances of the particular purchaser in question.

[55] The views of the Court of Appeal in *Au Meng Nam v. Ung Yak Chew & Ors* is to be preferred over the decision of the same court in *Ong Ban Chai* for the reason that, in my respectful view, the court in the latter case had

- A conflated the concepts of fraud and absence of good faith. At p. 368H (MLJ)¹⁷ of the judgment, the learned judge took the view that, as the trial judge had cleared the second and third appellants and the fourth defendant from the charge of conspiracy, he ought to have proceeded to hold that the knowledge of the respondent's adverse claim ought not have prejudiced their case, which
- B commentators have taken to mean that knowledge of a prior claim will not vitiate good faith¹⁸. However, at p. 673 (CLJ); p. 372H (MLJ), the judgment states, when discussing the Federal Court decision of *Pekan Nenas*:

C The Federal Court decided that to be a *bona fide* purchaser one should have contracted in good faith for value, and that knowledge of an adverse claim is not fraud. (emphasis added)

- [56] However, the live issue in the appeal was not whether second and third appellants were fraudulent (since the trial judge had cleared them of conspiracy) but rather whether knowledge of an adverse claim vitiated good faith.

D [57] Whether or not a particular purchaser in question is a purchaser in good faith and for valuable consideration is a question of fact, to be determined based on the particular circumstances of each case.

E [58] Having considered the evidence in this case, I am of the view that the first defendant has not proven, on a balance of probabilities, that it is a purchaser in good faith and for valuable consideration. This finding is based on the following considerations:

- (a) the first defendant had known of the existence of the plaintiff and the fact that the plaintiff was claiming the subject land, because their respective
- F representatives had attended the PTG investigation meeting on 7 November 2008. The first defendant therefore acquired knowledge of the existence of the plaintiff's claim (even if not the precise nature of such claim) before the first defendant became the registered proprietor;
- (b) it is inconceivable that the first defendant (through DW1) could not have
- G known that the plaintiff was not the entity that had sold the land to the second defendant. The second defendant's representative was present at the investigation meeting, and one could imagine that the first question that DW1 would have asked DW2 was, who was the plaintiff and/or PW2? DW2 would have, in all likelihood professed his ignorance and
- H stated that this was not the person from whom he had bought the land. Thus, the state of knowledge of the first defendant was that it must have known that someone was asserting rights over the subject land, and that this person was not the same person from whom the second defendant had purchased the land;
- I (c) the first defendant had, at that point, a contractual remedy against the second defendant for rescission of the Second SPA if it was shown that the plaintiff was the rightful proprietor of the land. This would have

been, in my view, the most prudent course of action that a reasonable purchaser would have taken. Instead, the first defendant pursued completion of the Second SPA;

- (d) not only did it do so, it also resisted the third defendant's application to add the plaintiff as a party to the proceedings to remove the registrar's caveat. A person acting in good faith would not have resisted the application, but instead would have taken steps to ascertain who the rightful proprietor was. The counsel for the first defendant argued that the reference to Pembangunan Orkid Desa Sdn Bhd at para. 9 of the relevant affidavit of DW4 in the proceedings to remove the registrar's caveat was not a reference to the plaintiff, but to the impostor company. This was because at this point, it would not have been clear to the PTG that there were two companies claiming to be Pembangunan Orkid Desa Sdn Bhd. In my judgment, even if DW4 and the PTG were not aware of there being two companies, the first defendant would have known that someone other than the vendor in the First SPA was asserting its rights over the land, for the reason explained in sub-para. (b) *ante*; and
- (e) the first defendant did not tender any evidence that it had sought clarification from the second defendant either on the registrar's caveat entered at the request of the impostor company or on the claim by the plaintiff. In my view, a reasonably prudent purchaser would not only have been consternated by the delay in effecting registration (which eventually took over three years) after having paid RM1.77 million, but would have taken steps to recover, or at least demand recovery of, the purchase price paid.

[59] In coming to the conclusion that the first defendant has failed to prove that its *bona fides*, I have not taken into account whether the structuring of the purchase consideration into two separate payments (one purportedly for earthworks) vitiated good faith. Accordingly, my finding of the illegality of the second SPA is independent of my finding that the first purchaser lacked *bona fides*. The question whether the act of depriving the state of its revenue amounted to deceit that vitiates good faith in the context of s. 340(3) of the NLC is not one that is necessary to be answered in this case.

[60] The first defendant in its defence claimed that the plaintiff was guilty of delay, was not *bona fide* and did not come to court with clean hands. It was further claimed that the plaintiff did not have the requisite mandate or authority to prosecute its claim, on account of the fact that the plaintiff only had one valid director, based on the results of a search conducted at the Companies Commission and searches conducted at the National Registration Department. However, counsel for the first defendant did not seek to pursue these points in submissions, and I am accordingly treating these defences as

A having been abandoned. In any event, in the context of the facts of this case, I am of the view that the plaintiff has not been guilty of unconscionable delay so as to justify the application of the doctrine of laches.

B [61] I therefore find that the first defendant's title is defeasible pursuant to s. 340(3) of the NLC, and order that the register of titles be amended to reflect the plaintiff as the registered proprietor of the subject land. As a consequence of the findings *ante*, the first defendant's counterclaim is dismissed because the action by the plaintiff to lodge a private caveat over the land was in exercise of its rights to protect its legitimate claim over the land.

C *Departure From The Plaintiff's Pleadings Case*

D [62] It was advanced on behalf of the first defendant that the plaintiff's claim ought to be dismissed on account of the fact that the pleadings had originally stated that it had found out about the forgery and falsification by the impostor company in May 2006, whereas the evidence that the plaintiff had sought to adduce at trial showed that the plaintiff had found out only later that its land was transferred to the second defendant, sometime in 2008.

E [63] The plaintiff had applied to amend its pleadings after trial, and I had allowed the amendments on 10 June 2015, a decision that is the subject of an outstanding appeal. In my judgment, there is no departure from the statement of claim, for the reason that I had approved the amendments to the statement of claim.

The Claim Against The Third Defendant In Respect Of Registration

F [64] The plaintiff claimed against the third defendant for its alleged failure to comply with the provisions of the NLC in effecting the transfers of the land to the second defendant and to the first defendant.

G [65] Senior Federal Counsel for the third defendant argued that the plaintiff's claims in respect of the registration of the first and second defendants are statute barred by virtue of s. 2(a) of the Public Authorities Protection Act 1948, which provides for a limitation period of 36 months.

H [66] In my judgment, in as far as the acts of the third defendant in effecting registration of the first and second defendants are concerned, the plaintiff is barred by limitation as against the third defendant, for the following reasons:

I (a) in relation to the registration of the second defendant, the cause of action arose when the plaintiff discovered that the land had been transferred to the second defendant. Even assuming that the plaintiff found out about the transfer only in February 2008, the plaintiff's cause of action would have expired in February 2011. This suit was only commenced on 25 February 2013 (as an originating summons, and subsequently converted into a writ action); and

- (b) in relation to the registration of the first defendant, the cause of action would have arisen when the first defendant was registered as proprietor, which was on 11 February 2010. This meant that the plaintiff would also be barred by limitation in its claim against the third defendant in connection with the registration of the first defendant as proprietor.

A

The Claim Against The Defendants For Failure To Inform

B

[67] At para. 17 of the statement of claim, the plaintiff claimed against the defendants for their failure to inform the plaintiff of the notice of motion commenced by the second defendant to remove the registrar's caveat.

[68] The claims against the first and second defendants may be dismissed for the simple reason that neither of them, as purchasers of the land, owed any duty to the plaintiff to inform the plaintiff that the second defendant was seeking to remove the registrar's caveat. Nor had the plaintiff pleaded fraud or conspiracy against the second defendant or the first defendant.

C

[69] As far as the third defendant was concerned, Ms Narkunavathy argued that the third defendant did not owe a duty of care to the plaintiff because, applying the test in *Caparo Industries Plc v. Dickman*¹⁹:

D

- (a) the loss suffered by the plaintiff as a result of not being told of the notice of application was not reasonably foreseeable because at the time the registrar's caveat was entered, the plaintiff was no longer the registered proprietor of the land;
- (b) there was no proximity between plaintiff and the third defendant, on account of the fact that the registrar's caveat was entered pursuant to the complaint by the impostor company, and not the plaintiff; and
- (c) it would not be fair and reasonable for a duty of care to be imposed on the third defendant because the application to remove the registrar's caveat was instituted by the second defendant.

E

F

[70] In my judgment, a duty of care was owed by the third defendant to the plaintiff to notify it of the proceedings to remove the registrar's caveat, notwithstanding the fact that the caveat had been entered pursuant to a complaint not by the plaintiff but by the impostor company. In this case, the plaintiff had made a separate complaint that its title had been usurped. That this was so was evident by the fact that the third defendant had notified PW2 on 29 October 2008 that the investigation meeting was to be held on 7 November 2008. In such circumstances, a duty arose on the PTG to inform the complainant that an application had been made to remove the restraint in dealings, as any such action would have materially and adversely affected the plaintiff's interests.

G

H

[71] The fact that the plaintiff was no longer the registered proprietor at the time the registrar's caveat was entered is immaterial, as the fact remains that the plaintiff ought to have been the registered proprietor. The proximity

I

- A between the third defendant and the plaintiff arose not through the complaint lodged by the impostor company pursuant to which the registrar's caveat was entered, but by the fact that the plaintiff had made a separate complaint to the third defendant. In such circumstances, it would be fair and entirely reasonable for a duty of care to be owed by the third defendant to the plaintiff.
- B The failure by the third defendant to notify the plaintiff of the application by the second defendant to remove the registrar's caveat amounted to a breach of this duty, damages for which are to be assessed.

[72] The plaintiff only came to know in 2012 of the fact that the registrar's caveat was removed and that there was an action to remove such caveat. The plaintiff is therefore not out of time.

C

Summary Of Findings And Orders

[73] The following summarises the key findings of this court:

- D (a) the second SPA had the effect of evading the payment of real property gains tax on the undeclared profit and the payment of stamp duty on the additional consideration, which meant that the second SPA was *void ab initio* pursuant to s. 24(b) of the Contracts Act 1950. As the Second SPA was *void ab initio*, the transfer of the title for the subject land from the second defendant to the first defendant was obtained by means of a void instrument, which in turn renders the title of the first defendant defeasible pursuant to s. 340(2)(b) of the NLC;
- E
- F (b) the transfer of the land to the second defendant was effected through forged documents. As a consequence, the second defendant's title was defeasible under s. 340(2)(b) of the NLC. The first defendant failed to establish, on the facts, that it was a purchaser in good faith and for valuable consideration. Accordingly, the first defendant's title was defeasible pursuant to s. 340(3) of the NLC;
- G (c) the plaintiff is barred by limitation as against the third defendant in relation to the acts of the third defendant in effecting registration of the first and second defendants as proprietors;
- H (d) the plaintiff's claims against the first and second defendants for their failure to inform the plaintiff of the notice of motion commenced by the second defendant to remove the registrar's caveat must necessarily fail, as neither of them owed any duty to the plaintiff to inform the plaintiff regarding the action to remove the registrar's caveat; and
- I (e) a duty of care was owed by the third defendant to the plaintiff to notify it of the proceedings to remove the registrar's caveat, and the failure by the third defendant to so notify amounted to a breach of this duty.

- [74]** For the reasons set out above, there will be judgment as follows: A
- (a) the register of titles is to be amended to reflect the plaintiff as the registered proprietor of the subject land;
 - (b) the first defendant is directed to deliver to the plaintiff the issue document of title for the subject land; B
 - (c) the third defendant shall be liable to the plaintiff for damages, the quantum of which shall be assessed by a registrar of the High Court;
 - (d) the first defendant's counterclaim is dismissed with costs of RM20,000;
 - (e) in respect of the plaintiff's claim, the plaintiff shall be paid costs of: C
 - (i) RM50,000 by the first defendant; and
 - (ii) RM20,000 by the third defendant,

and there shall be no order as to costs as between the plaintiff and the second defendant. D

Endnotes:

1. Notes of Evidence for 19 March 2015, p. 201
2. See para. 9(iv)(b) of the witness statement by DW4
3. [1971] 1 LNS 96, [1971] 1 MLJ 224 a decision of the Federal Court dealing with a predecessor provision to s. 340(3) of the NLC E
4. [1998] 4 CLJ 674, [1998] 4 MLJ 585
5. [1998] 1 CLJ 793, [1998] 1 MLJ 465
6. [1962] 1 LNS 115, [1962] 1 MLJ 143
7. [1989] 1 LNS 191, [1989] 1 MLJ 457 F
8. see pp. 10-11 of the notes of evidence for 18 March 2015
9. [1982] 2 MLJ 53
10. [1998] 3 CLJ 637; [1998] 3 MLJ 346
11. *op. cit.* G
12. [2005] 2 CLJ 167, [2005] 2 MLJ 589
13. *op. cit.*, at 668g (CLJ); 368H (MLJ)
14. [2007] 4 CLJ 526 (CA), [2007] 5 MLJ 136
15. [2001] 2 CLJ 133, [2001] 1 MLJ 241
16. [2010] 2 CLJ 269, [2010] 2 MLJ 1 H
17. CLJ at 668g
18. See *Land Law in Malaysia* (3rd edn), Teo & Khaw, at para. 4.162.
19. [1990] 2 AC 605

I